

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1654 of 1993

to

First Appeal No. 1657 of 1993

with

Civil Application No.2454 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NEW INDIA INSURANCE CO.LTD

Versus

MAHEBUDABIBI SIKANRDERKHAN KHOKHAR

Appearance:

MR RAJNI H MEHTA for appellant.
MR BS PATEL for Respondent No. 1
NOTICE SERVED for Respondent No. 3
MR PF MAKWANA for Respondent No. 7
MR AJ DESAI AGP for Respondent No. 8

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

Date of decision: 27/03/98

ORAL JUDGEMENT (Per J.N. Bhatt, J.:)

Admit. Service of notice is waived by learned advocate Mr. B.S. Patel for respondent No.1, Mr. P.F. Makwana for respondent No.7 and Mr. A. J. Desai, A.G.P. for respondent No.8. At the request of the parties, the appeals are taken up for final hearing today.

On the unfateful day of 13.7.1985, a road accident occurred, wherein, police jeep No. GTV 7680 was involved which was proceeding on Sinor-Dabhoi, Highway, alongwith police personnel, who became victims when the said jeep reached near village Damalpura on account of rash and negligent driving on the part of the driver of the jeep, Nanubhai Jethabhai, who lost control of the jeep and it collided with a roadside tree culminating into fatal injuries to four persons and causing serious injuries to three claimants. The heirs and legal representatives of the deceased and the injured claimants filed seven claim petitions before MACT, Vadodara, wherein, claims were, partly, allowed which are challenged before us in these group of four appeals No. 1654 of 1993 to 1657 of 1993 and remaining three appeals bearing First Appeal Nos. 1658 to 1660 of 1993, came to be, summarily, dismissed and the following chart would, undoubtedly, show the material particulars in the highlight of the factual scenario:

Sr. MACP FA Claim Awarded Remarks
No. No. No. Rs. Rs.

1. 48/86 1654/93 2,50,000 2,40,000 Death
2. 62/86 1655/93 2,50,000 2,40,000 Death
3. 57/86 1656/93 2,50,000 2,00,000 Death
4. 321/86 1657/93 60,000 60,000 Injury

Since all these claim petitions raise identical question and arise out of common judgment same being disposed of by this common judgment.

Learned advocate for the appellant Mr. Mehta, forcefully, submitted before us that the liability of the appellant - New India Assurance Company Limited in any case would not be more than Rs.50,000 per claim. He has placed reliance on the provisions of Section 95 (2)(b)(i) of Motor Vehicles Act, 1939 and the case law of New India Assurance Company Limited v. Thakor Bhemaji Ganeshji, 34 (2) GLR 1051, which came to be countenanced by the advocates appearing for the other side.

It can, therefore, very well say that the only point in the group of these four petitions is limited. The

question required to be considered is as to whether the liability of the insurance company is limited to the extent of Rs.50,000 under the provisions of Section 95 (2) (b) (i) of the Act or unlimited liability as held by the Tribunal. After having considered the facts and circumstances emerging from the record of the present case and having regard to the proposition of law laid down by this Court in New India Assurance Company's case (supra), we have no hesitation in finding that the view taken by the Tribunal is erroneous and is required to be corrected by, partly, the appeals.

Having regard to the aforesaid facts and circumstances and the facts of the present group of appeals, the liability of the appellant - insurance company shall be to the extent of Rs.50,000 with proportionate costs and interest on the said amount instead of full amount in each claim petitions and, consequently, award is altered in each of the claim petitions and modified, accordingly. While allowing group of appeals and clarifying that the liability of the other tortfeasors, jointly and severally, shall be as per the amount awarded by the Tribunal.

Appeals stand, partly, allowed. The awards are directed to be modified accordingly. No order as to costs.

Before parting, it may be noted that the directions with regard to disbursement and investment in the impugned awards are quashed and set aside.

In view of the facts and circumstances and our aforesaid directions, the direction contained in the interim order obviously shall not assume any survival value. Hence, civil application No. 2454 of 1998 shall stand disposed of. No order as to costs.